

MASS. EA20.2: M38/4

UMASS/AMHERST

UMASS/AMHERST



312066 0374 6861 3



MASSACHUSETTS BROWNFIELDS UPDATE

Autumn 1995

DOCUMENTS COLLECTION
UNIVERSITY OF MASSACHUSETTS
AMHERST, MA 01003

OCT 17 1997



Commonwealth of Massachusetts
William F. Weld, Governor
Argeo Paul Cellucci, Lt. Governor

Executive Office of Environmental Affairs
Trudy Coxe, Secretary
Department of Environmental Protection
David B. Struhs, Commissioner

Executive Office of Economic Affairs
Gloria C. Larson, Secretary
Massachusetts Office of Business Development
John R. Regan, Executive Director

Defining the Challenge

Success in Southeastern Massachusetts

The city of Taunton is moving ahead with plans to acquire an abandoned silver factory through tax foreclosure, finish cleaning up the property and build a new public works department headquarters on the existing foundation. The project is being undertaken with support from both DEP and the Southeast Regional Planning and Economic Development District, which have sponsored joint workshops to help city officials and citizen groups better understand cleanup and liability issues. Taunton Silversmiths closed its doors in the late 1980s, selling off its equipment but leaving behind plating tanks, vats and drums containing acids and cyanides which the U.S. Environmental Protection Agency later removed. A subsequent fire destroyed most buildings on the site, but transformers laden with polychlorinated biphenyl (PCB)-contaminated oil survived the blaze. Vandals raided them for copper, causing PCB contamination that DEP cleaned up with state funds.

Across Massachusetts, contamination from decades of industrial activity has left many old factories and other sites abandoned or underused, posing risks to public health and adding to blight in our communities. The problem is most prevalent in urban areas where many properties that would otherwise be prime for development lie dormant because they are tainted by oil or hazardous materials.

The presence of contamination can create significant barriers to the development or reuse of property. Private parties are reluctant to make the necessary investments because of liability concerns and cleanup cost uncertainties. Financing is difficult to obtain because lenders fear that environmental and legal obstacles will make it difficult for borrowers to repay their loans.

Not unique to Massachusetts but common nationwide, these circumstances prompt developers to shift their attention to clean sites in rural or suburban communities while the "brownfields" – prime urban and industrial sites that are already served by transportation infrastructure and utilities – remain abandoned or unproductive.

But today, the cleanup and redevelopment of brownfields is increasingly seen as a key to the revitalization of central cities and urban areas. Putting these properties back into productive use can create jobs and increase local tax revenues. It also can help slow "urban sprawl" and the problems that go with it, including increased air pollution and loss of open space.

Many states and the U.S. Environmental Protection Agency (EPA) see the need for a coordinated response and have begun developing programs to specifically address problems common to brownfield sites. From the ongoing national debate, there is growing consensus that a successful brownfields program must provide:

- Flexible rules that enable private parties to voluntarily achieve permanent cleanup standards and get out of the system as quickly as possible;
- Clear definitions of liability and specific relief to those parties willing to tackle brownfield sites; and
- Government incentives for financing assessment and cleanup – including low-interest loans, loan guarantees and tax credits – that are specifically directed at areas of the state where economic development is considered a priority.

Crafting the Solution

Massachusetts has become a leader in addressing the problems posed by brownfield sites. Working cooperatively, the state's Executive Offices of Environmental Affairs (EOEnA), Economic Affairs (EOEcA) and Communities and Development (EOCD), along with the Department of Environmental Protection (DEP) and the Massachusetts Office of Business Development (MOBD), have developed a number of tools for promoting the cleanup and redevelopment of contaminated property in urban and industrial areas.

Streamlined Waste Site Cleanup Program

To encourage faster assessment and cleanup of contaminated sites, DEP recently redesigned its Waste Site Cleanup Program. Under 1992 amendments to Chapter 21E (the State Superfund Law), the private sector was given both more responsibility for cleanups and greater flexibility to get them done. New rules for reporting, assessing, and cleaning up releases of oil and hazardous materials were codified in a totally revamped Massachusetts Contingency Plan (MCP), which took effect on October 1, 1993.

It is easier today for property owners to restore contaminated sites for development or sale, and for the state to focus its limited resources on the most serious environmental threats. DEP no longer directly oversees assessment and cleanup at most sites. Instead, property owners hire private environmental professionals licensed by an independent state board (known as "Licensed Site Professionals" or "LSPs") to evaluate site conditions and oversee response actions. DEP audits the results at 20 percent of all sites each year to ensure adherence to state cleanup standards and codes of conduct.

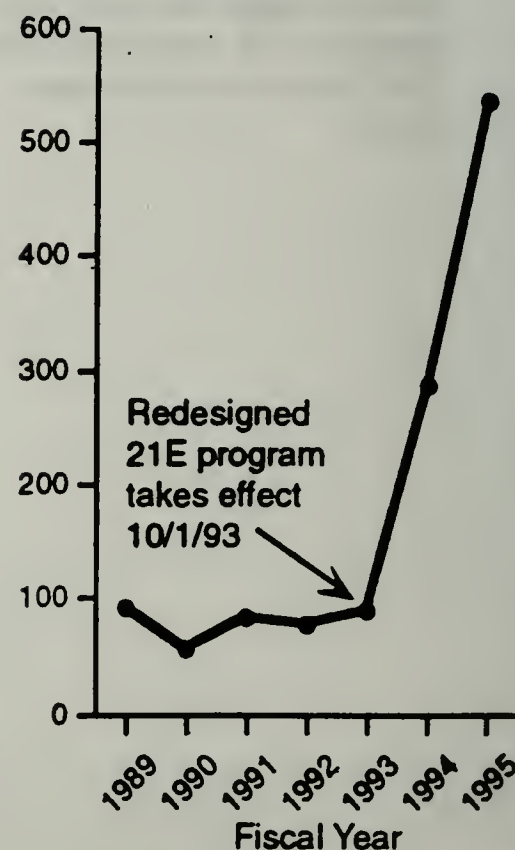
Specific components of the revised MCP include:

- Clear notification thresholds that screen out problems not likely to pose significant risks to public health or the environment;
- Opportunities and incentives for cleaning up small problems quickly and reducing risks;
- Performance standards that allow the level of investigation to be set by the nature of the problem (DEP sets standards but does not dictate how to meet them);
- Generic cleanup standards for the most common contaminants, eliminating the need for detailed risk assessment and uncertainty about "how clean is clean enough";

Success in the Berkshires

The Massachusetts Museum of Contemporary Art (MassMoCA), proposed for the site of a vacant capacitor manufacturing complex in North Adams, would bring new jobs and visitors to the Berkshires by building on the region's national reputation as a cultural mecca. MassMoCA would make full use of the 28 varied and eclectic buildings on the 13-acre site and would bring together education, dance, film, music, visual arts and related activities under a single institutional umbrella. The site is currently in the final stages of cleanup under the Massachusetts Contingency Plan (MCP). Removal and containment of contaminants including PCBs, waste oils and degreasing solvents is essentially complete, and a combination of institutional controls and deed restrictions are being executed to safeguard public health by limiting future uses of the site.

Number of sites achieving a permanent solution



Success North of Boston

The 99-acre site of a former Everett chemical plant is being sold to a developer with plans to convert the property into a major regional shopping center. The site – contaminated with PCBs and a range of acids, hydrocarbons, organic compounds and industrial compounds – is being cleaned up at the chemical company's expense. Everett officials and the developer are working closely together to ensure that plans for reuse of the site are acceptable to both the city and its residents.

-Courtesy of the Metropolitan Area Planning Council

Success in Downtown Worcester

DEP is working closely with the Worcester Redevelopment Authority and its consultants to clear the way for the \$200 million St. Vincent/Fallon Medical Complex (known locally as Medical City) - a project that will involve the reclamation of 24 acres in downtown Worcester for a major new inner city hospital complex. State bond funds totalling \$20 million have been committed to site preparation and infrastructure development. Already, some \$3 million in public funds have paid for the removal of dozens of underground storage tanks, the excavation of thousands of yards of contaminated soil, and the remediation of groundwater contamination. Assessment and cleanup of the entire site should be substantially complete within two years.

- Consideration of future land use so that sites intended for commercial or industrial development, for example, do not have to be restored to the "pristine" conditions required for residential development – resulting in considerable cost savings; and
- Clear endpoints to the process – known as Response Action Outcomes (RAOs) – that provide citizens, lenders, prospective buyers and tenants with definitive information on what has been done at a site and why.

Amendments to Chapter 21E also clarified the liability of secured lenders and fiduciaries to ensure that, so long as certain requirements are met, they will not be held responsible for cleanup costs – a move intended to encourage trust management of contaminated properties and lending for their development. Statutory changes also similarly clarified the liability of towns and cities that foreclose on contaminated property for failure to pay taxes, making it easier for them to return idle properties to the real estate market.

Since the new Waste Site Cleanup Program was implemented two years ago, 453 individuals (more than two-thirds of those who applied) have qualified as LSPs, more than 2,600 risk reduction actions have been taken, and some 2,500 assessments and cleanups have received LSP "sign offs" to get out of the MCP system (one-fifth of them involving sites that had languished for years under the old rules). More than 250 DEP audits of private sector response actions overseen by LSPs have been completed, showing a 90 percent "pass" rate. Finally, at 94 sites, future land use has been factored into cleanup goals and Activity and Use Limitations (in the form of deed notices or restrictions) have been put in place to support the selection of site-appropriate cleanup standards.

Clean Sites Initiative

Under this initiative, aimed at attracting new investment to economic development target areas across Massachusetts, "Covenants Not to Sue" are available to prospective purchasers or tenants of contaminated sites. The Clean Sites Initiative is a joint program of the Executive Offices of Environmental Affairs and Economic Affairs, the Attorney General and DEP. Target areas are designated by the Economic Assistance Coordinating Council.

In exchange for a commitment to clean up an eligible site, a participant in the program receives:

- Assurances that once cleanup is done, they will be relieved of further liability for past contamination of the site;

- Protection from liability for any damage to natural resources on and around the site; and
- The ability to transfer the covenant, along with the property, to subsequent buyers.

Since the program's inception in November 1994, 18 covenants have been requested. Of these, six have been granted, nine are being reviewed, two have been placed "on hold" at the applicant's request, and one has been placed "on hold" at DEP's request.

The program has provided an important ancillary benefit: A number of previously unknown contaminated sites have been reported to DEP. (Properly notifying the agency of the presence of oil or hazardous materials is a prerequisite for participation in the program.)

Currently operating on a pilot basis, the Clean Sites Initiative will be evaluated this fall and may be expanded based on the first year's experience.

Massachusetts Economic Development Incentive Program

Created through enactment of Chapter 19 of the General Laws in 1993, the Massachusetts Economic Development Incentive Program is designed to stimulate job creation in blighted areas, attract new businesses, encourage existing businesses to expand and increase overall economic development readiness. This program is administered by the Executive Offices of Economic Affairs and Communities and Development, and the Massachusetts Office of Business Development.

Eligible projects include businesses that are expanding, relocating, or building new facilities and creating permanent new jobs within designated Economic Opportunity Areas (these are within Economic Target Areas and also are designated by the Economic Assistance Coordinating Council). Benefits for eligible projects, including brownfield sites requiring cleanup, include:

- Five percent State Investment Tax Credit;
- Ten percent Abandoned Building Tax Deduction;
- Priority for state capital funding; and
- Municipal Tax Benefits (i.e. Special Tax Assessment or Tax Increment Financing).

These benefits, often obtained in conjunction with a Covenant Not to Sue under the Clean Sites Initiative, provide powerful incentives to those who want to clean up and develop contaminated property.

Success in the Merrimack Valley

The city of Lawrence is exploiting its Economic Opportunity Area and Target Area designations, and taking full advantage of the Clean Sites Initiative and other tools, to advance an ambitious public/private cleanup and revitalization of the city's downtown mill and business district. The Lawrence Gateway Project will involve both city-owned and private property, attract a \$37 million investment by a current industrial property owner and another \$1.1 million in spending by the city and other private sources, and include \$4.5 million in state-funded highway improvements. The two major sources of historic contamination in the mill district were a papermaking company and a plastics manufacturer. At the first site, PCBs and containerized waste are being removed and city officials plan to file deed restrictions on future land use. Plans for the second site call for the demolition of 22 buildings, offsite disposal of debris, and ongoing assessment and cleanup of dioxin, heavy metal and PCB contamination in soil and groundwater.

Success at Closing Deals

Not only have the recent revisions to the MCP accelerated the assessment and cleanup of "brownfield" sites. They have encouraged bank financing and real estate transactions that probably would not have happened before the rules were changed. Under the revised MCP, for example:

- The owner of a commercial property in Lexington - underlain by a chlorinated solvent plume exceeding reportable limits and documented to be coming from an offsite source - qualified for "Downgradient Property Status" and subsequently obtained financing from a bank not previously involved with the property. Earlier efforts to attract financing had failed.
- A developer received attractive purchase terms by agreeing to buy and clean up a potentially valuable but contaminated parcel of land in Cambridge that had long been languishing on the real estate market. His safety valve was not taking title to the commercial and industrial property until the cleanup was finished. The original owner not only sold a site he previously couldn't move but avoided the expense of cleanup.
- The sale of a property at the upgradient end of a contamination plume in Canton was closed while the full extent of the problem was still being studied. Proceeds from the sale funded cleanup costs, which the owner would otherwise have not been able to afford. Coincidentally, the new property owner was able to obtain an environmental insurance policy - coverage not generally available before the revised MCP made cleanup costs and schedules more predictable.

-Courtesy of Jeffrey Hardin,
TGG Environmental

Outreach and Technical Assistance

Just as important as developing tools to encourage and accelerate brownfields development is ensuring that those who might want to take advantage are made aware that these tools are available and shown the most effective ways to use them. Toward this end, all of the participating state agencies have launched aggressive outreach and technical assistance programs.

Efforts to spread the word about the new, more flexible 21E program as well as brownfield cleanup and development incentives have included focus groups and seminars for site owners, developers, lenders, economic development officials and citizens. More than 400 people attended five "Reclaiming Contaminated Urban Sites" seminars held jointly by DEP and the Executive Office of Economic Affairs in autumn 1994.

Central Massachusetts Economic Development Authority

This authority, whose members include the city of Worcester and a number of neighboring Worcester County towns, was created through a Special Act of the Legislature - supported by the Executive Office of Environmental Affairs - specifically to address brownfield sites. The authority will use funds from its member communities to buy contaminated property and clean it up for future redevelopment. Member communities will share the proceeds from the resulting economic growth while preserving green spaces. A bill now pending in the Legislature would create a similar authority in Berkshire County.

Next Steps

While Massachusetts is off to an encouraging start, the Commonwealth clearly has much more work to do in the area of urban cleanup and revitalization. A high-level task force cochaired by the Executive Offices of Environmental Affairs and Economic Affairs - with representation from business, real estate, lending, environmental consulting, municipal government, and environmental advocacy/justice interests - will convene this month to help establish the framework for an overall brownfields strategy, and to begin developing new tools to supplement initiatives already underway. The panel's top priorities will include:

- Creation of financial assistance mechanisms, such as an Industrial Sites Recycling Fund which would provide loans to assist municipalities and prospective buyers with the assessment and cleanup of sites that are in economically distressed areas, as well as mechanisms to increase private sector financing (e.g., loan guarantees).

- Evaluation of the pilot Clean Sites Initiative and creation of a larger, more permanent program incorporating the lessons learned to date.
- Establishment of new policies that clarify existing limits to liability (which are poorly understood and infrequently invoked) and specify how private parties can take advantage of them.

Other agency actions underway include:

- Creation of a "special project" status under the MCP that would allow DEP to extend deadlines and postpone fees at brownfield sites that are being actively marketed for redevelopment, provided immediate health threats are addressed.
- Additional streamlining to ensure that cleanup rules are clear, certain and flexible – including better definition of those aquifers over which cleanups do not need to meet drinking water standards, criteria for determining when temporary (rather than permanent) solutions can be implemented, and guidance on when it is not feasible to clean a site to "background" levels.

Conclusion

We simply cannot afford to let urban property sit idle because it is contaminated. Developing Brownfield sites is a win-win situation, benefiting both the environment and the economy. The agencies of the Commonwealth, in partnership with municipal officials, citizen groups, and business interests, have shown their dedication toward this endeavor, and will continue to work toward more effective and efficient cleanup of these sites and the reestablishment of sustainable development.

For further information, please contact the Bureau of Waste Site Cleanup by calling the MCP Hotline (be sure to press "1" when given menu options): (617) 338-2255 from the Boston area and outside of Massachusetts, or 1-800-462-0444 from area codes 413 and 508.

For further information about the Massachusetts Economic Development Incentive Program or to request an application for participation in the Clean Sites Initiative, please contact the Massachusetts Office of Business Development location nearest you:

Boston	(617) 727-3206
Dartmouth	(508) 997-1438
Lowell	(508) 970-1193
Springfield	(413) 784-1580
Worcester	(508) 792-7506

Success at a Superfund Site

State officials are currently negotiating a Covenant Not to Sue with several agencies and authorities that are working jointly to locate both an intermodal transportation center and a major interstate highway interchange on cleaned-up portions of the Industri-Plex federal Superfund site in Woburn. Meanwhile, a custodial trust created by the parties legally liable for cleanup is working to develop other previously unused parts of the property. The state expects to use deed restrictions and other tools to encourage appropriate private development. Industri-Plex encompasses some 250 acres, one-third of which require cleanup. A long history of chemical, pesticide and animal glue manufacturing on the site resulted in metals and organics contamination of groundwater, soils and river sediments and the burial of animal hide residues in four major areas. In 1986, the U.S. Environmental Protection Agency called for in-place covering of contaminated soils and the development of institutional controls to allow reuse of the site to the extent possible. EPA has negotiated a Prospective Purchaser Agreement with one private party and expects to do several more.